

## II.

A number of courts have evaluated the relationship between Burford abstention and a preemption claim. In *Neufield v. City of Baltimore*, 964 F.2d 347, 350 (4th Cir. 1992), cert. denied, 116 S. Ct. 1852 (1996), the court stated that "several circuits have emphasized that Burford abstention is particularly inappropriate when preemption issues are present." But see *Aluminum Co. v. Utilities Com'n of State of North Carolina*, 713 F.2d 1024, 1030 (4th Cir. 1983), cert. denied, 465 U.S. 1052 (1984).

There are three reasons courts have stated for not abstaining on a preemption claim. First, Burford abstention is inappropriate when federal law or the Constitution places the regulation at issue beyond the state's authority. *Neufield* at 350 (citing *Middle South Energy Inc. v. Arkansas Public Service Com'n*, 772 F.2d 404, 417 (8th Cir. 1985) cert. denied, 474 U.S. 1102 (1986)). The PTA has not placed this matter beyond the reach of Michigan. In fact, the PTA created an exception for Michigan and nine other states. The issue in this matter is whether Michigan did something to cause it to fall out of the exception created for it.

Second, courts have stated that a decision to abstain in preemption cases amounts to implicitly ruling on the merits. *International Brotherhood of Electrical Workers, Local Union No. 1245 v. Public Service Commission of Nevada*, 614 F.2d 206, 212 (9th Cir. 1980). Again, this is not the case in this matter. By finding it should abstain, this Court has not ruled implicitly or

explicitly on whether or not the Michigan Court of Appeals should uphold or reverse the Commission's Order.

Third, the Supreme Court has stated that abstention is inappropriate on a preemption claim when there is not "a state law claim nor even an assertion that the federal claims are 'in any way entangled in a skein of state-law that must be untangled before the federal case can proceed.'" *New Orleans* at 361 (citing *McNeese v. Board of Education for Community Unit School Dist.*, 187, *Cahokia*, 373 U.S. 668 (1963)). This case is based upon a state law issue. The federal claims of the plaintiff are entangled in a skein of state law.

With regard to the relationship between abstention and preemption the Sixth Circuit has stated, "we do not see any reason to analyze abstention cases involving preemption claims differently than other abstention cases." *CSTX, Inc. v. Pits*, 883 F.2d 468, 472 (6th Cir. 1989), cert. denied, 494 U.S. 1030 (1990).

The Court in *CSTX* stated,

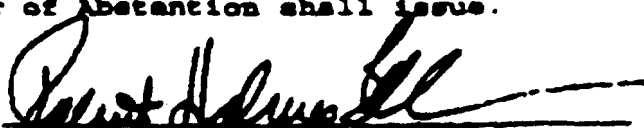
It may be argued that state judges are somewhat more inclined to read state regulatory jurisdiction more broadly than federal judges... Even if it were true that state judges were less inclined to displace state regulatory jurisdiction than federal judges, this tendency is not sufficient reason to modify the doctrine of abstention by substituting federal for state judges in cases raising preemption issues.

*Id.* at 473.

Because this Court should abstain from this matter, the fact that Ameritech alleges that the FTA preempts the Commission's

Order will not cause this court to evaluate this matter any differently. Therefore, this Court finds that it should abstain from this matter, and an order of abstention shall issue.

Dated: March 4, 1996

  
ROBERT EDGAR BELL  
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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RONALD E. WELTON, CLERK  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICH

BY VB

AMERITECH MICHIGAN, INC.,  
a Michigan Corporation,

Plaintiff,

v.

Case No. 5:96-CV-166

HON. ROBERT HOLMES BELL

JOHN G. STRAND, DAVID A. SVANDA  
and JOHN C. SHEA,

Defendants.


ORDER OF ABSTENTION

In accordance with the opinion entered this date;

IT IS HEREBY ORDERED that this Court shall abstain from this  
matter;

IT IS FURTHER ORDERED that Plaintiff Ameritech Michigan,  
Inc.'s Motion for Preliminary Injunction against enforcement of  
the June 26, 1996, Order of the Michigan Public Service  
Commission is DENIED as moot.

Dated: November 4, 1996

  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE

**CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH**

Shading indicates that item has been appealed by Ameritech

	Requested To Be Remanded	Requested To Be Vacated
<b>I. Interconnection</b> (Checklist Item (i))		
A. Transmission and routing of exchange and exchange access service (Act, § 251(c)(2)(A))		
B. At any technically feasible point (Act, § 251(c)(2)(B))	■	
1. Line side of local switch (47 CFR § 51.305(a)(2))	■	
2. Trunk side of local switch (Id.)	■	
3. Trunk connection points of a tandem (Id.)	■	
4. Central office cross connect points (Id.)	■	
5. Out-of-band signaling transfer points necessary to exchange traffic and access call related databases (Id.)	■	
6. Points of access to unbundled network elements (Id.)	■	
C. Access that is equal in quality to what Ameritech provides itself or any subsidiary, affiliate, or other party (Act, § 251(a)(2)(C))		
1. That meets the same technical criteria and standards used in Ameritech's network (47 CFR § 51.305(a)(3))		
2. Upon request, that is superior or inferior to access provided to other carriers (47 CFR § 51.305(a)(4))		■
D. On rates, terms, and conditions that are just, reasonable, and nondiscriminatory and are no less favorable than the terms and conditions Ameritech applies to itself (Act, §§ 251(c)(2)(D), 252(d)(1), 47 CFR § 51.305(a)(5))		
E. Two-way trunking upon request and as technically feasible (47 CFR § 51.305(f))		
F. Through any interconnection method to which the parties may agree, consistent with the Act (47 CFR § 51.321(a))		
1. Physical collocation (Act, § 251(c)(6); 47 CFR § 51.321(b)(1))		

## CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH

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	Requested To Be Remanded	Requested To Be Vacated
2. Virtual collocation (Act, § 251(c)(6); 47 CFR § 51.321(b)(2))		
a. For any type of equipment used for interconnection or access to unbundled network elements, including optical terminating equipment and multiplexers and equipment being collocated to terminate basic transmission facilities (47 CFR § 51.323(b))		
b. Allow requesting carrier to connect collocated equipment to Ameritech's unbundled network elements (47 CFR § 51.323(g))		
c. Permit two collocating carriers to interconnect equipment at Ameritech's premises (47 CFR § 51.323(h))		
d. For physical or virtual collocation, physically accessible interconnection points in accordance with 47 CFR § 51.323(d))		
e. Ameritech shall install, maintain and repair collocated equipment in same manner as its own equipment (47 CFR § 51.323(e))		
f. Allocate space in accordance with 47 CFR § 51.323(f)		■
3. Meet point arrangements (47 CFR § 51.321(b)(2))		
G. Provide technical information regarding Ameritech's facilities to allow requesting carrier to achieve interconnection (47 CFR § 51.305(f))		
<b>II. Unbundled Network Elements</b>		
A. Provide to any requesting carrier, nondiscriminatory access to network elements (Act, § 251(c)(3))		■
1. At any technically feasible point (47 CFR § 51.307(a))		■
2. On rates, terms, and conditions that are just, reasonable, and nondiscriminatory (Id.)		■
3. Provide technical information regarding Ameritech's facilities to enable requesting carrier to achieve access to elements (47 CFR 51.307(e))		

**CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH**

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	Requested To Be Remanded	Requested To Be Vacated
B. Provide network elements in a manner that allows requesting carrier to provide any telecommunications service that may be offered by means of that element (47 CFR § 51.307(c))		
C. Access to the facility or functionality of a network element provided separately from access to other elements, and for a separate charge (47 CFR § 51.307(d))		
D. No limitations, restrictions, or requirements on requests for or use of unbundled network elements that would impair a requesting carrier's ability to provide a telecommunications service in the manner it intends (47 CFR § 51.309(a))		■
E. A requesting carrier may purchase an unbundled network element to provide exchange access services to itself (47 CFR § 51.309(b))		
F. A requesting carrier is entitled to exclusive use of an unbundled network facility, and to use for a period of time (47 CFR § 51.309(c))	■	
G. Ameritech retains duty to maintain, repair, or replace the unbundled network element (Id.)	■	
H. Where technically feasible, quality of the unbundled element itself and access to the element must be at least equal in quality to what Ameritech provides itself or any subsidiary, affiliate, or other party (47 CFR § 51.311(a)(b); 47 CFR § 51.313(a), (b))		
I. Requesting carrier also may obtain service that is superior or inferior to what Ameritech provides itself, upon request (47 CFR § 51.311(c))		■
J. All required OSS functions made available to purchasers of unbundled elements (47 CFR § 51.313(c))		
K. Pricing in accord with § 252(d)(1)		■
<b>Combinations of Unbundled Elements (47 CFR § 51.315)</b>		
A. Unbundled elements provided in a manner that allows requesting carriers to combine such elements to provide a telecommunications service (47 CFR § 51.315(a))		■
B. Requested network elements that Ameritech currently combines will only be separated upon		■

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	Requested To Be Remanded	Requested To Be Vacated
request (47 CFR § 51.315(b))		
C. Ameritech will perform functions necessary to combine requested network elements where technically feasible and where such combination will not impair the ability of other carriers to access unbundled elements or interconnect with Ameritech (47 CFR § 51.315(c))		■
D. Ameritech will combine network elements with elements possessed by requesting carrier, where technically feasible (47 CFR § 51.315(d))		■
<b>Network Interface Device (NID) (47 CFR § 51.319(b))</b>		
Requesting carrier can connect its local loops to customer's inside wiring through Ameritech's NID and an adjoining NID deployed by requesting carrier (Id.)	■	
<b>Operations Support Systems Functions (47 CFR § 51.319(f))</b>		
A. Pre-ordering and provisioning (Id.)		■
B. Ordering (Id.)		■
C. Maintenance and repair (Id.)		■
D. Billing (Id.)		■
E. OSS functions made available by January 1, 1997 (Id.)		■
<b>Operator Services and Directory Assistance (47 CFR § 51.319(g))</b>		
A. Operator services facilities (Id.)		■
B. Directory assistance facilities (Id.)		■
C. Access provided where technically feasible (Id.)		■
<b>Further Unbundling (47 CFR § 51.317)</b>		■
<b>III. Poles, Ducts, Conduits and Rights-of-Way (Checklist Item (iii))s</b>		
A. Provide nondiscriminatory access on same basis as provided to Ameritech, its affiliates,		



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	<b>Requested To Be Remanded</b>	<b>Requested To Be Vacated</b>
or any other person at just and reasonable rates in accordance with the requirements of § 224		
B. Costs of modifying Structure allocated in accordance with 47 CFR § 1.1416		
C. At just and reasonable rates in accordance with Section 224 (Act, § 271(c)(2)(B)(iii))		
<b>IV. Unbundled Loops</b> (Checklist item (iv))		
A. Transmission facility between an MDF or equivalent facility in Ameritech's central office and end-user premises (47 CFR § 51.319(a))	■	
B. Price based on flat rate (Rules § 51.509(a))		■
<b>V. Unbundled Transport</b> (Checklist Item (v))		
A. Dedicated transport or entrance facilities or shared transport facilities providing telecommunications service between wire centers or switches owned by Ameritech or requesting carrier (47 CFR § 51.319(d)(1), (d)(2)(i))	■	
B. From trunk side of switch unbundled from switching or other services (Act, § 271(c)(2)(B)(v))		
C. Provide all technically feasible transmission facilities, features, functions, and capabilities that requesting carrier could use to provide telecommunications service (47 CFR § 51.319(d)(2)(ii))	■	
D. Permit, as technically feasible, requesting carrier to connect interoffice facilities to equipment it designates, including its collocated facilities (47 CFR § 51.319(d)(2)(iii))	■	
E. Permit requesting carrier to obtain functionality of Ameritech's DCS systems in same manner as interexchange carriers (47 CFR § 51.319(d)(2)(iv))	■	
F. Flat-rated charge for dedicated transmission links (47 CFR § 51.509(c))		■
G. Rates for shared transmission facilities between tandem and end-office based on manner in which costs are incurred (47 CFR § 51.509(d))		■
<b>VI. Local and Tandem Switching</b>		

# **CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH**

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	Requested To Be Remanded	Requested To Be Vacated
A. Local switching capability (47 CFR § 51.319(c)(1))	■	
1. Line-side facilities (Id.)	■	
2. Trunk-side facilities (Id.)	■	
3. All features, functions and capabilities of the switch including (Id.)	■	
a. Basic switching function and capabilities (Id.)	■	
b. All other features switch is capable of providing, including custom calling, CLASS, Centrex, and any technically feasible customized routing functions (Id.)	■	
4. Ameritech will transfer customer's local service in same interval it transfers customer's interexchange carrier, if transfer requires only a software change (47 CFR 51.319(c)(ii))	■	
5. Price based on flat rate for line ports and flat rate or per-minute usage charge for switching matrix and trunk ports (47 CFR § 51.509(b))		■
B. Tandem switching capability (47 CFR § 51.319(c)(2))	■	
1. Trunk-connect facilities (Id.)	■	
2. Trunk to trunk switching function (Id.)	■	
3. Functions centralized in tandem switches, including call recording, routing to operator services, and signalling conversion features (Id.)	■	
C. Costs recovered via usage-sensitive charges or in other manner consistent with how they are incurred (47 CFR § 51.509(e))		■
VII. Nondiscriminatory Access to 911 and E911 services; directory assistance services to allow other carrier's customers to obtain telephone numbers; and operator call completion services (checklist item (vii))		
911 and E911 services		

**CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH**

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	Requested To Be Remanded	Requested To Be Vacated
<b>Operator Call Completion Services</b>		
A. Available on same rates, terms and conditions to all carriers (47 CFR § 51.217(b))		
B. Requesting carrier may obtain access at least equal in quality to that of the providing LEC (47 CFR § 51.217(a)(2))		
C. Accessible by dialing 0 or 0+, regardless of local service provider (47 CFR § 51.217(c)(2))		
D. No unreasonable dialing delays (47 CFR § 51.217(b))		
<b>Directory Assistance Services</b>		
A. Available on same rates, terms, and conditions to all carriers (47 CFR § 51.217(b))		
B. Requesting carrier may obtain access at least equal in quality to that of Ameritech (47 CFR § 51.217(a)(2))		
C. Any customer of competing provider can obtain directory listings, except unlisted numbers, for customers of any carrier on a nondiscriminatory basis (47 CFR § 51.217(c)(3)(i))		
D. No unreasonable dialing delays (47 CFR § 51.217(b))		
E. Directory listings provided to competing provider in readily accessible magnetic tape or electronic formats in timely fashion (47 CFR § 51.217(c)(3)(ii))		
F. Competing providers have access to and may read information in Ameritech's directory assistance databases (Id.)		
G. Access to adjunct features (e.g., rating tables or customer information databases) necessary to allow competing providers full use of operator and directory assistance services (47 CFR § 51.217(d))		
H. Branding of Operator Services and Directory Assistance Services (47 CFR § 51.217(d))		
<b>VIII. White Pages Directory Listings (Checklist item (viii))</b>		

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	Requested To Be Remanded	Requested To Be Vacated
White Pages directory listing for customers of other carrier's local exchange service (Act, § 271(c) (2XB) (viii))		
<b>IX. Access to Telephone Numbers</b> (Checklist item (ix))		
A. Nondiscriminatory access until the date numbering administration guidelines, plan or rules are established (47 CFR § 51.217(a) (2))		
B. After that date, compliance with such guidelines, plan or rules (Act, § 271(c) (2) (B) (ix))		
C. Access at least equal to what Ameritech provides itself (47 CFR § 51.217(c) (1))		
<b>X. Access to Signaling and Call-related Databases</b> (Checklist item (x))		
A. Signaling Networks (47 CFR § 51.319(e) (1))	■	
1. Signaling links (Id.)	■	
2. Signaling transfer points (Id.)	■	
3. For carriers purchasing unbundling switching capability, access to Ameritech's signaling network in same manner as Ameritech (Id.)	■	
4. For requesting carriers with their own switching facilities, access to Ameritech's signaling for each of carriers switches in same manner as Ameritech connects its switches to an STP or in any other technically feasible manner (Id.)	■	
B. Call-related Databases (47 CFR § 51.319(e) (2))	■	
1. Line information database (Id.)	■	
2. Toll-free calling database (Id.)	■	
3. Downstream number portability database (Id.)	■	
4. AIN databases (Id.)	■	
a. Physical access at the STP linked to the unbundled database (Id.)	■	

# **CHECKLIST ITEMS WHOSE UNDERLYING FCC RULES ARE UNDER APPEAL BY AMERITECH**

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	Requested To Be Remanded	Requested To Be Vacated
b. Carriers purchasing local switching capability may access Ameritech's service control point in same manner as Ameritech (Id.)	■	
c. Carrier deploying own switch given access to Ameritech's service control point in manner allowing carrier to provide any call-related, database-supported switch (Id.)	■	
d. Access to call-related databases complies with § 222 of the Act (Id.)	■	
C. Service Management Systems (47 CFR § 51.319(e)(3))	■	
1. Sends information and call processing instructions to service control point and provides requesting carriers with call-processing capabilities (Id.)	■	
2. Requesting carrier given information necessary to enter correctly, or format for entry, information for input into SMS (Id.)	■	
3. Requesting carrier allowed same access as Ameritech to develop AIN-based services via SMS (Id.)	■	
4. Access to SMS will comply with § 222 of the Act (Id.)	■	
5. Costs of call-related database and signaling service is usage sensitive, though the cost of dedicated circuits known as signaling links is flat-rated (47 CFR § 51.509(f))		■
<b>XI. Number Portability</b> (Checklist item (xi))		
A. Provide interim number portability through RCF, DID or other comparable arrangements (Act, § 271(c)(2)(B)(xi))		
B. At any other comparable and technically feasible method upon request (47 CFR § 52.7 (a))		
C. Competitively neutral cost recovery mechanism (47 CFR § 42.9)		
D. After regulations are issued, full compliance with performance criteria and schedules for implementation of long-term database method (47 CFR § 42.3(a), (b))		

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	Requested To Be Remanded	Requested To Be Vacated
<b>XII. Local Dialing Parity</b> (Checklist item (xii))		
A. Provide requesting carriers with information necessary to implement local dialing parity in accordance with § 251(c)(3)		
B. Nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings with no unreasonable dialing delays (Act, § 251(c)(3))		
<b>XIII. Reciprocal Compensation</b> (Checklist item (xiii))		
A. Reciprocal compensation arrangements in accord with Act § 252(d)(2)		
1. No charge for local traffic by party on whose network call originates (47 CFR § 51.703(b))	■	
2. Rates set by ICC in accord with 47 CFR § 51.705		■
<b>XIV. Resale</b> (Checklist item (xiv))		
A. Provide at wholesale rates any telecommunications service provided at retail to subscribers who are not telecommunications carriers (Act, § 251(c)(4)(A))		■
B. Not to impose unreasonable or discriminatory conditions or limitations (Act, § 251(c)(4)(B))		
C. Services are equal in quality, subject to same conditions, and within same provisioning time intervals provided to other carriers and to end users (47 CFR § 51.603(b))	■	
D. Price in accord with § 252(d)(3)		■

# Ameritech welcomes fair competition

**A**meritech has led the way in bringing full and fair competition to Michigan consumers ("Disconnected from savings," Aug. 26).

No one — not AT&T, MCI, or any other company or government agency — has been a bigger champion of local phone competition than Ameritech. We have 20 agreements throughout our region with competitors, allowing them to hook up to our network and provide competing service.

AT&T has no interconnection agreement with anyone, anywhere in the country. It's not a matter of what AT&T executives want, but rather what they don't want, that's keeping them from striking a bargain. They don't want to let Ameritech or any other Bell company into the long-distance business.

We were one of the first supporters of complete competition with our 1993 "Customers First" plan, which received the backing of the Federal Communications Commission, the U.S. Justice Department and even AT&T. Elements of that simple plan, now incorporated into federal law, will speed the arrival of local competition and our ability to offer customers long-distance service.

In Michigan, 11 companies — including long-distance giants AT&T and MCI — have stepped forward to compete with us in providing local phone service to customers. We have never stood in the way, or objected to any company's request to be licensed by the state Public Service Commission as a local phone company.

One hundred percent of our local market is open for competition. MCI has taken out full-page newspaper ads to tout its capabilities in the local phone market.

In citing the recent PSC decision on dialing parity for toll calls, our competitors charge we're not opening it up "as ordered." But the language of the order gave us exactly the choice our competitors question or deny. We could cut access charges 55 percent, or open an area to dialing parity. We chose the former.

We've already opened 10 percent of our network to toll-calling competition. Under federal law, Ameritech will open its total local toll market to full competition at exactly the same time we're allowed to compete in the long-distance business.

We are eager to do this. There should be no head starts for anyone. Customers await the benefits of competition for all communications services, and they want Ameritech to be one of the options available to them.

If our competitors truly want to speed up competition for all services — local, toll and long-distance — and keep the interests of consumers ahead of those of

communications providers, existing and new, we say: full speed ahead.

But if our competitors continue to demand a garage sale of Ameritech's network, a wholesale giveaway of Ameritech's business, and a head start in this competition, they're in for a fight.

Nothing in law, regulation or common sense would say otherwise. Ameritech's \$4-billion Michigan infrastructure investment, our 30,000 Michigan employees and retirees, and the customers in this state demand it.

**Robert Cooper**  
President  
Ameritech Michigan  
Detroit

DETROIT FREE PRESS/MONDAY SEPTEMBER 9, 1996

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**



In the Matter of the Complaint of )  
 AT&T COMMUNICATIONS OF )  
 MICHIGAN, INC. against )  
 AMERITECH MICHIGAN )  
 REGARDING ACCESS SERVICE )

Case No. U- **U-11240**

**COMPLAINT**  
**and**  
**APPLICATION FOR RESOLUTION**

**INTRODUCTION**

AT&T Communicatons of Michigan, Inc. ("AT&T") brings this Complaint and Application for Resolution of a dispute between two telecommunication providers regarding the provisioning and maintenance of regulated telecommunications services in the State of Michigan. It is brought by AT&T under §§ 101, 202, 203, 204, 205 and 305 of the Michigan Telecommunications Act (the "Act"), 1991 P.A. 179, as amended by 1995 P.A. 216 (MCL 484.2101 *et seq.*; MSA 22.1469(101) *et seq.*) and Rule 501 *et seq.* of the Commission's Rules of Practice and Procedure. Since September 1994, the quality of Ameritech's access service has deteriorated based upon a variety of measurements critical to assessing overall service performance including: (1) the time to provision new customer service; and (2) the time to restore failed customer lines. These performance



deficiencies have, in turn, hindered AT&T's ability to provide high quality interexchange services to Michigan consumers, all contrary to the public interest in Michigan and specifically contrary to Michigan law. AT&T seeks relief regarding this dramatic and unabated degradation in the quality of access services being provided it by Ameritech Michigan. AT&T further seeks to have the Commission resolve the dispute over the quality of Ameritech's access services by establishing enforceable, minimum performance standards or benchmarks which Ameritech is required to meet and by assessing penalties and other remedies against Ameritech for failure to meet those standards or benchmarks of quality.

In support of its Complaint, AT&T states as follows:

### **PARTIES**

1. AT&T Communications of Michigan, Inc. ("AT&T") is a telecommunications carrier certified to provide interexchange telecommunications services under authority of this Commission. AT&T's address is 4660 S. Hagadorn Road, East Lansing, MI 48823. AT&T provides telecommunication services for compensation in Michigan and is therefore a "telecommunication provider" for purposes of the Act.

2. Michigan Bell Telephone Company, d/b/a Ameritech ("Ameritech") is a telecommunications carrier certified to provide telecommunications services in Michigan, including the carrier access services at issue here. Ameritech is also a provider of basic local exchange service in that it provides access lines and usage within local calling areas in Michigan for the transmission of high-quality 2-way interactive switched voice and data communication. Ameritech's address is 444 Michigan Avenue, Detroit, MI 48226.

### **JURISDICTION**

3. The Michigan Telecommunications Act was enacted to allow and encourage competition for telecommunications services in Michigan while preserving essential regulatory authority over the price and quality of regulated services. See The Act, § 101. One of the stated purposes of the Act is to encourage the introduction of new services, the entry of new providers and the development of new technologies and to increase investment in the telecommunications infrastructure in Michigan through incentives to providers to offer the most efficient services and products. See The Act, § 101(d). The Act was also designed to ensure effective review and disposition of disputes between telecommunications providers. The Act, § 101(h).

4. Access Service is a telecommunications service regulated by the Act. See The Act, §§ 310 and 311. In Michigan, Ameritech offers access service under tariff to interexchange service providers, including AT&T. AT&T purchases Ameritech's access service for use in its own telecommunications offerings to end-users.

5. Under §305 of the Act, a provider of basic local exchange service such as Ameritech is prohibited from doing any of the following:

- (a) Degrading the quality of access service provided to another provider (§305(1)(c));
- (b) Impairing the speed, quality, or efficiency of lines used by another provider (§305(1)(d));
- (c) Delaying interconnection or providing inferior connection to another provider (§305(1)(b)); and

(d) Discriminating against another provider by refusing or delaying access service to the local exchange (§305(1)(a)).

6. Under § 202 of the Act, the Commission has the authority to issue orders to establish and enforce quality standards for the provision of telecommunications services in the State of Michigan. See The Act, § 202(c).

7. Under §204 of the Act, if two or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue, either provider may file with the Commission an application for resolution of the matter.

8. Moreover, § 205(2) of the Act expressly authorizes the Commission to require changes in how regulated telecommunications services are provided based upon a determination that the quality or conditions for the service violate the Act or are adverse to the public interest. See also *GTE North, Inc. v. PSC*, 215 Mich. App. 137, 544 N.W.2d 678 (1996) (holding that it is proper for the Commission to exercise its authority under § 205(2) in the context of a complaint case); *In the matter of the Complaint of Sprint Communications Company L.P. against Ameritech Michigan*, Case No. U-11037, Opinion and Order, August 1, 1996 (upon a finding that Ameritech was creating a condition under which a regulated service was being offered in a manner that was adverse to the public interest, the Commission issued an Order requiring changes).

9. Finally, under § 601 of the Act, the Commission has the authority, after notice and hearing, to order remedies and penalties to protect and make whole ratepayers or other persons who have suffered an economic loss as a result of a violation of the Act.

### **THE NATURE OF THE ACCESS SERVICES PROVIDED**

10. Access Service is access to a local exchange network for the purpose of enabling a provider to originate or terminate interexchange telecommunications services within the local exchange. See The Act, § 102(a). In Michigan, AT&T is Ameritech's single largest access service customer. AT&T pays Ameritech over \$200 million/year for the access services it purchases from Ameritech in Michigan.

11. There are two general types of access service: (1) switched access service; and (2) dedicated (or special) access service. The first, switched access service, refers to the origination and termination of calls that use switching capabilities. The second, dedicated access service, refers to use of a direct call path, as provided by a local exchange carrier ("LEC") like Ameritech, linking a long-distance carrier to an end-user for the provisioning of interexchange services. This complaint focuses on Ameritech's dedicated access services and all references to "access service" herein shall refer to these Ameritech/AT&T dedicated call paths.

12. Dedicated access service includes both DS0 digital service ("DS0") and DS1 ("DS1") service. DS0 service is basic voice grade service that allows a single voice conversation on a single facility channel. This service is generally used to establish a dedicated line within a customer's network. DS0 service, which is the largest volume of access service that AT&T provides, can be used for all types of communications, including voice and data transmissions.

13. DS1 service allows for twenty-four voice services on the same single channel facility. Because of the increased capacity, DS1 services can accommodate higher speed data and produce higher speed transmissions. Larger volume customers

often seek to reduce costs by taking advantage of this high capacity technology. Like DS0 service, DS1 service is available for more than just voice transmission -- it can be used to send electronic data and can be subdivided to allow for voice and data transmission combinations.

14. Both DS0 and DS1 services as provided by Ameritech are regulated monopoly services. They are not available to AT&T on the broad basis supplied by Ameritech from any other source. In Michigan, AT&T purchases approximately \$25 million of dedicated access services from Ameritech each year.

15. Access service is critically important to AT&T's ability to provide competitive and high-quality interexchange services to Michigan consumers. Without access, AT&T would be unable to reach its end-users. Without high-quality access service, AT&T is unable to provide the type of quality telecommunications services that its end-users demand and require, and are accustomed to receiving in Michigan.

16. In an effort to monitor the quality of the access service it receives, AT&T and Ameritech have agreed on, and monitor, a number of critical measurements of acceptable access service quality. These measurements include, among other things: (1) the time it takes an access supplier to provision new service (both DS0 and DS1); and (2) the time it takes an access supplier to restore failed lines (both DS0 and DS1). To maintain AT&T's traditional high-quality standards and to satisfy customer quality expectations, it is imperative that the access service provided to AT&T by Ameritech regularly meet quality standards for each of these measurements.

17. In addition to tracking individual performance in each of these areas, AT&T also establishes quality benchmarks by analyzing the relative performance of the

major local exchange carriers ("LECs"). In this manner, AT&T is able to determine whether fluctuations in performance reflect industry-wide problems or changing circumstances within the telecommunications field.

**THE QUALITY OF AMERITECH'S ACCESS SERVICES HAS  
DETERIORATED TO UNREASONABLE AND UNSATISFACTORY  
LEVELS THAT ARE IN VIOLATION OF THE ACT  
AND CONTRARY TO THE PUBLIC INTEREST**

18. Prior to October, 1994, Ameritech provided AT&T with access services of a quality that was generally acceptable to AT&T and its customers. Although there may have been periodic performance problems, Ameritech routinely delivered a satisfactory quality of service for the measures of critical performance outlined above.

19. As a representative sample of the level of performance at which Ameritech previously performed, the following figures are Ameritech's average performance levels for the 3rd quarter of 1994. These figures represent the level of service that Ameritech is capable of delivering:

- (a) Provisioning of new DS0 service: Ameritech provided new service by the customer's desired due date ("CDDD") for 95%<sup>1</sup> of all new orders.
- (b) Provisioning of new DS1 service: Ameritech provided new service by the customer's desired due date for 95% of all new orders.
- (c) Restoration of failed DS0 services: Ameritech restored failed DS0 service in less than three hours in 79% of all DS0 failures.

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<sup>1</sup> Quarterly performance figures as referenced in this Complaint and the supporting testimony have been rounded to the nearest whole number.

- (d) Restoration of failed DS1 services: Ameritech restored failed DS1 service in less than one hour in 36% of all DS1 failures.

See Charts attached as JTF-1, JTF-2, JTF-5 and JTF-6.<sup>2</sup> The provisioning of access service at these levels represented adequate progress toward AT&T's quality requirements and in turn allowed AT&T to provide Michigan consumers with high-quality interexchange telecommunication services.

20. Since September 1994, the quality of Ameritech's access service has dramatically deteriorated in each of the performance measurements outlined above. As of August 1996, Ameritech's performance in the areas outlined above had deteriorated to the following levels:

- (a) Provisioning of new DS0 service: Ameritech provided new service by the customer's desired due date for only 43% of all new DS0 orders, a decrease from 95%.
- (b) Provisioning of new DS1 service: Ameritech provided new service by the customer's desired due date for only 60% of all new DS1 orders, a decrease from 95%.
- (c) Restoration of failed DS0 services: Ameritech restored failed DS0 service in less than three hours in only 51% of all DS0 failures, a decrease from 79%.

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<sup>2</sup> The access service purchased by AT&T in Michigan is offered by Ameritech under both intrastate and interstate tariffs. Because the access purchased under each type of tariff is functionally and operationally similar, and because there is no material distinction in the provisioning or maintenance of the service purchased under the two tariffs, AT&T has not segregated the services for purposes of this complaint.

- (d) Restoration of failed DS1 services: Ameritech restored failed DS1 service in less than one hour in only 10% of all DS1 failures, a decrease from 36%.

See Charts attached as JTF-1, JTF-2, JTF-5 and JTF-6 .

21. The substantial degree of the deterioration can be seen by a direct comparison of Ameritech performance in two different time periods. For example, Ameritech's CDDD miss rate for DS0 service rose from a 5% miss rate in the third quarter of 1994 to a 53% miss rate in the second quarter of 1996. See AT&T Access Performance Reports for Ameritech, attached as JTF-9 and JTF-10 .

22. While Ameritech's access service performance deteriorated, the performance of certain other major LECs remained level in many measures. See, e.g., JTF-3 and JTF-4 attached. This suggests that the changes in the level of Ameritech's performance cannot be simply attributed to industry-wide problems or changes in the telecommunications field.

23. Indeed, the degree of the deterioration in the level of Ameritech's performance is dramatically illustrated by comparing Ameritech performance over the last 18 months to the performance of Bell Atlantic and Southwest Bell -- the two major LECs that are similar to Ameritech is the size and scope of the services provided. Such a comparison shows that Ameritech is currently operating at levels that are inferior to other industry performers.

24. For instance, as it relates to the provisioning of new DS0 service, the August 1996 performance figures for Ameritech, Bell Atlantic and Southwest Bell are as follows:



Provisioning of new DS0 service by  
the customer's desired due date

Bell Atlantic	94% of all orders
Southwest Bell	95% of all orders
Ameritech	43% of all orders

See Chart attached as JTF-3.

25. In provisioning new DS1 service, Ameritech's August 1996 performance was likewise deficient:

Provisioning of new DS1 service by  
the customer's desired due date

Bell Atlantic	93% of all orders
Southwest Bell	98% of all orders
Ameritech	60% of all orders

See Chart attached as JTF-5.

26. Ameritech's performance has also deteriorated in the area of outage duration. In August 1996, Ameritech was able to restore failed DS0 service within 3 hours in only 51% of the cases. By contrast, Bell Atlantic performed at a level of 66% and Southwest Bell at 67%. See JTF-7 attached. As with failed DS1 service, the performance figures in August 1996 for restoration within 1 hour are as follows: Bell Atlantic - 27%; Southwest Bell - 30%; and Ameritech - 10%. See JTF-9 attached.

27. AT&T has worked cooperatively with Ameritech in an attempt to improve Ameritech's access service performance. The parties' joint efforts, which have spanned eighteen months, have included daily telephone communication as well as a series of face-to-face management and executive meetings. The performance deficiencies have